



THE STATE
of **ALASKA**
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July 10, 2019

The Honorable Bert Stedman
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The Honorable Natasha von Imhof
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The Honorable Neal Foster
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Re: *Power Cost Equalization Endowment Fund Sweep*

Dear Finance Co-Chairs:

Article 9, § 17(d) of the Alaska Constitution requires that money in the general fund available for appropriation at the end of each fiscal year must be deposited into the Constitutional Budget Reserve Fund (CBR) to repay amounts withdrawn from the CBR. This is commonly referred to as the “sweep” into the CBR. The Department of Law has reviewed whether this requirement applies to the unobligated balance of the Power Cost Equalization Endowment (PCE) Fund. Because the PCE Fund is available for appropriation and has all the essential attributes of general fund money, we conclude that the PCE Fund should be “swept” under Article 9, § 17(d) and used to repay withdrawals from the CBR.

As you know, money from the CBR may be withdrawn only under limited circumstances. The constitution requires that any withdrawals be repaid if there is any money “available for appropriation” left “in the general fund” at the end of the fiscal year. Leftover general fund monies must be placed or “swept” into the CBR at the end of each

fiscal year until withdrawals from the CBR have been repaid. The two criterion for determining what funds must be “swept” into the CBR are: (1) the funds must be “in the general fund” “at the end of the fiscal year,” and (2) the funds must be “available for appropriation.” The Alaska Supreme Court has explained what money is “available for appropriation” within the meaning of the constitution, including, significantly, even money that has already been appropriated into a state fund, so long as further legislative appropriation is necessary before expenditures can be made.¹ In contrast, the term “general fund” is not defined in either the Alaska Constitution or in statute, and the Supreme Court has not addressed the question.

Our analysis leads us to conclude that funds in the PCE Fund meet both of the above criterions and should be swept into the CBR. The PCE Fund was created in 2000 to fund the power cost equalization and rural electric capitalization fund.² It consists of legislative appropriations to the fund, the earnings of the fund, gifts, and federal money.³ It was created “as a separate fund of the [Alaska Energy] authority.”⁴ The fund is managed by the Commissioner of Revenue, who is directed to invest the fund.⁵ Alaska Statute 42.45.085 provides requirements for investing the fund and using the earnings. Any use of the fund or its earnings requires an appropriation—the Alaska Energy Authority (AEA) has no ability to spend money in the PCE without legislative appropriation.

Although the statutory scheme appears to contemplate that money in the fund will be spent solely on specified purposes, AS 42.45.070(b) and .085(b) make clear that “[n]othing in this section creates a dedicated fund.” Although the PCE Fund is described by statute as a “separate fund” of the AEA, the legislature may appropriate money in the PCE Fund for any public purpose and the AEA may not expend money in the fund without a further legislative appropriation. Thus, it is available for appropriation. Because money in the PCE Fund is not dedicated, can be used by the legislature at will for any public purpose, and cannot be spent without legislative authorization, the PCE Fund is no different than general fund money. Because these funds are “available for appropriation” and are no different than general funds, the constitution requires that they be swept into the CBR under Article IX, § 17(d).

¹ *Hickel v. Cowper*, 874 P.2d 922, 926-35 (Alaska 1994).

² See AS 42.45.085(a)(1) and AS 42.45.100(b)(3).

³ AS 42.45.070.

⁴ AS 42.45.070(a).

⁵ AS 42.45.080(a)(2).

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In addition, it would circumvent the intent of the CBR amendment if the legislature could simply create accounts within public corporations and then appropriate revenues to those accounts to avoid the CBR repayment obligation. Nothing in the constitution or statutes precludes funds like the PCE Fund from being part of the general fund, and to treat it otherwise would undermine the goals and purpose of the CBR.

Accordingly, we conclude that the PCE Fund *is* in the general fund, is subject to appropriation and therefore, is subject to the repayment provisions of Article 9, § 17(d). In short, we conclude that funds in the PCE Fund must be “swept” into the CBR at the end of each fiscal year.

Sincerely,



Kevin G. Clarkson
Attorney General

cc: Cathy Giessel, Senate President
Bryce Edgmon, Speaker of the House